

PROPRIETARY RIGHTS OF THE COMMUNAL AND MUNICIPAL COUNCILS

I. TAKÁCS

Department of Political Law, University Eötvös Loránd, Budapest

Received: 30. 3. 1970.

In this paper we propose to survey the comprehensive sphere of problems defying a definition with any pretence to precision, namely the sphere of problems which, in the framework of the activities of the councils, embraces questions of proprietary rights extending from the direct economic activities of a local character, displayed by the communal and municipal councils and their agencies in their own right, to the performance of economic functions as agents of the central sovereign power. This analysis will partly set out from a schematic presentation of the social conditions constituting the objective basis of the organizational work of the councils. By keeping in mind the volume, purpose and rules of management of assets controlled by the communal and municipal councils, we shall make an attempt at defining the principles implied in the proprietary rights advancing the implementation of the economic autonomy of the communal and municipal councils. This end is also served by a historical retrospect which for this reason will go into details more than usual.

The analyses which have set themselves the target of developing the activities of the councils with a view to consolidating socialist democratism, have in each case demonstrated the justification of the economic independence of the councils.¹ This claim to an independence has been given a particularly definite form in the definition of the self-governing character of the councils.

Since its creation self-government has been one of the outstanding features of the system of councils. However, owing to conscious attempts at centralization, this feature was thrust to the background and, apart from a few exceptions², fell victim to a conspiracy of silence. It would be hardly worth while to enlarge on an analysis of the resultants of the economic languishment of the councils exactly at the start. Attention should be focussed rather on the way how an effective exploitation of the available material resources could be advanced under actual conditions. And to this end we have to rely on the firm ideological basis provided by Marxism – Leninism, to the basic notions adapted to it, and the statutory regulations carrying these notions into effect. We have to make light of formal disputes showing off a semblance of a loyalty to principles, such as a discussion of the public character of the councils, which so

far nobody denied, the formal and emphatic assertion of the sovereign character without a concrete content, the contraposition of the self-governing character and democratic centralism, etc. The clue to the solution of problems of principle emerging in this discussion is given by a concrete analysis of the social conditions, or more precisely, the establishment of the real social functions of the councils by having recourse to as exact methods as possible, and finally the formulation of the conclusions which may be drawn from this analysis.

I.

The socialist content of the self-government of communal and municipal councils and economic independence

1. In almost all upward-tending phases of the growth of socialist democracy the expansion of council-democracy was in the limelight of interest.³ Actually there are marked differences as compared to the earlier situation in so far as, besides problems of organization, questions of jurisdiction and the material conditions of exercising such authority appear on the agenda in growing numbers. The expression of the self-governing character of the councils, which, on the one part integrates the councils into the totality of the socialist state organism, and on the other, guarantees their independence of a high degree, in point of fact puts the re-formulation of the spheres of authority of the councils on the agenda. The self-government of the councils is embodied in the first place by the shaping of the organization and the election of the executives. However, in its significance the delimitation of the economic competences in a form fitting the self-governing character is equivalent to the former. Notwithstanding the fact that mainly the solution of organizational problems came into prominence at that time, the reform of 1954 was a landmark in the trend to consolidate democracy based on councils. The expansion of spheres of authority in 1954 and the enactment of the new Councils Act was considerable improvement as compared to the earlier situation. However, it should be remembered that a large number of 1954 provisions could be enforced only in 1958, after the defeat of the counter-revolution.

Another phase in the history of the councils is the one from 1960 to 1962. In this phase work was placed on broader mass support, even a large theoretical apparatus was mobilized,⁴ and it was thought that large-scale decentralization would be the outcome. However, the transfer of authority was going on in an extremely protracted manner, was drawn out over many years, whereas council contacts with the masses expanded by leaps and bounds, the activity of the population became a true factor among the many others acting as incentives to the councils.⁵ At that time mass communication had a significant role, which it has preserved to this day. Information of the public was improved not only quantitatively but also qualitatively by the spread of television.

In the assessment of the economic functions of councils, the introduction of the new forms of economic management has brought about appreciable changes. In the earlier system of management, the objectives of the economic

organizational work of the councils had to be planned, too, and development targets, even when their achievement relied on local financial resources, had to be integrated with the plan centrally, together with the financial cover and the guarantee of a production capacity. In this way even an otherwise successful communal development activity was made part and parcel of central planning, and the factors hampering an expanding local activity could not be eliminated.

Eventually the new form of economic management has not only shifted the responsibility for the solution of problems of a local character on the councils, but at the same time has provided the means for a solution, and has entrusted the councils with the co-ordination of the activities of the various economic organizations in the field of regional development.

In conformity with the basic principles of the reform, the councils are responsible for settlement development, including the tasks of housing, for meeting the communal needs of the population, for the improvement of communal services, and use zoning.

Essentially, earlier tasks manifesting themselves on a local scale had to be integrated with the central plans. Consequently, owing to a centralization of economic planning, the local agencies were turned into simple posting organs. Their decisions were of a formal character, since for practical purposes they were handled as mere suggestions only, notwithstanding the fact that according to the then doctrinal terminology the councils figured as the governmental agencies of the topmost type in the local organization, and in the usage of the Constitution the councils were the local agencies of sovereign power.

Nevertheless enormous efforts were made to liquidate the many centuries-old backwardness of the rural communities, but at the same time attention was given also to the development of towns, and here, too, remarkable achievement could be recorded.⁶

The budgetary operations of the councils were strongly restricted, gave no incentives for expedient management, as all savings were collected from the councils. The system failed to create forms of interestedness.

On the other hand, the councils had a considerable share in the implementation of the investments of the national economy,⁷ mainly owing to the role of the councils in the administration of the housing scheme.

A modification of the scope of council tasks was brought about by a considerable reduction of the guiding, aiding and organizational functions of the councils, so important in the initial phase of the agricultural co-operative movement, with the gathering strength of the co-operatives. The methods underwent a change and consequently the attention of the administrative machinery of the councils could be focussed on the supply of the needs of the population and the solutions of settlement development problems.

The change-over to the new method of economic management brought about the replacement of an exaggerated centralized guidance of national economy, the system of issuing instructions, by economic controls, and among these in the first place by a gradually expanding application of monetary incentives. In the new situation it appears as a peculiar contradiction that state enterprises can manage their affairs with an independence greater than that granted to the councils which operate as units of the socialist state machinery. The

establishment of the economic autonomy of the councils and the revision of the proprietary rights of the councils are intended to resolve this contradiction.

Whereas earlier somewhat one-sided efforts were made to tackle the problem of developing council-democracy from the organizational aspect, it now was recognized that the primary safeguard of the socialist self-government of councils was the establishment of their independence. The study of their proprietary rights fits into the framework of these problems.

Sándor Lakos, in his work already referred to, point-blank puts the question, whether "... the right of disposal should be supplemented with real proprietary rights ...", after he has criticized the concept of the indivisibility of socialist ownership "which suggested as if only the central, governmental agencies could be the sole depositaries of the proprietary rights of the state."⁸

2. So far the analyses purposing the increase of the economic autonomy of the councils have in the first place set out from a demand for the development of socialist democratism. They have failed to explore to their full depth the relations on the ground of which it has become obvious that the growth of the role of the councils in the field of economy is the outcome of an objective process determined by the material bases of the socialist system of society. The broadening scope of the economic organizational functions of the councils is in harmony with the present trends of the growth of the socialist state, prevailing in the phase of the completion of building up a socialist society, and with the ideological statements of Marxism—Leninism on the trends of development of socialist statehood. We have to go back to the classical teachings of Marxism—Leninism because in these days, exactly owing to ideological differences, considerable discrepancies have become noticeable in the statutory regulations of the socialist countries. More explicitly we shall deal only with the Yugoslav notions of local agencies and ownership.

In Yugoslavia, "de-etatization", a large-scale authorization of the communes, which express the direct democracy of the workers, to organize society for the satisfaction of material, cultural and other needs, are considered the criteria of socialist statehood.

A peculiarity of the methods of Yugoslav theoreticians is the one-sided criticism of the majority of the socialist countries. According to their doctrines, in the majority of the socialist countries "bureaucratic and centralistic conditions" are prevailing. This description will hold its own only in so far as bureaucratism as a danger in fact exists in the performance of the increased functions of the socialist state, or if the socialist state fails to take care permanently of the development of socialist economy and the consolidation of socialist democracy. In point of fact, the socialist states have not rejected centralism, still they try to apply centralism as conceived by Lenin: "... with democratic and socialist centralism neither the application of the same standards, nor uniformity introduced from above agree."⁹ A certain exaggeration of centralism experienced in certain periods does not express the political system as a whole, just as Yugoslav decentralization does not express the Yugoslav political system. According to the Yugoslav position "in Yugoslav society there are 'independent systems' such as the federation, the republic, the provinces, and the local communities."¹⁰ However, Lenin's concept of democratic centralism is not conflicting with either federation or territorial autonomy. No matter whether federation, or territorial autonomy is considered, Soviet power

embraces a society, much more split into units than Yugoslavia, with all her territorial and national communities for building up socialism. The centralism of the Soviet state has not made impossible the expression and assertion of territorial interest. In Lenin's words ". . . . democratic centralism does not preclude autonomy and federation at all . . . on the contrary, it presupposes the completest freedom of the different regions, moreover of the various communities of the State, in the elaboration of the different forms of state, social, as well as economic life."¹¹

The central organs and the territorial agencies in possession of local independence are tied together by relations created exactly by the application of the principle of democratic centralism. In this centralism rights of guidance are vested in the central organs, however, its methods and its practice guarantee the performance of local functions defined by local competences and, in particular, by specific local conditions.

In Yugoslavia "notwithstanding the fact that the economic evening of the formerly backward republics would be needed, rather a widening of the gap may be observed in consequence of which the backwardness has not only been preserved, but even increased."¹²

With a view to the self-government of society, in Yugoslavia the institutions of direct democracy have come into prominence in the place of the representative system. According to an author writing on the subject "the question is not only one of the local community as a commune, a territorial, political and social-economic community, i.e. of the co-operation, community of the nationals as citizens, but one of the co-operation, community of the workers, who work under the circumstances of freely unified collective work and make decisions affecting the functions and interests of society as a whole."¹³ This description accurately reflects the endeavour to present the communes as organizational units merging the economic and political functions. In contrast to the doctrinal structure and owing to the economic contradictions, the intervention of the central sovereign power has become necessary in a large number of fields. On the other hand, notwithstanding the declaration of the principle of self-government, the functions of the administrative organization could not be restricted appreciably on the present level of development.

Within the framework of the self-government of the workers, the Yugoslav theory regards in the sphere of ownership the direct ownership of the workers' collectives as the realization of socialist ownership relations, instead of all-national ownership.

The expansion of the proprietary rights of the councils has nothing to do with the Yugoslav principles denying the economic functions of the State and professing the principle of social self-government. As opposed to the Yugoslav principle of social self-government, of the direct proprietary rights of the workers void of authoritative interference, in Hungary the proprietary rights of the councils would tend to expand the sphere of competence of the representative organ possessing rights of self-government as compared to the actual rights of a management of property. I.e. the proprietary rights would be transferred to an intermediate organization, i.e. the organization of the councils operating as part of the governmental organization.

II.

Regulation of Communal Ownership in the Hungarian Bourgeois Legal System

For the purpose of the subject-matter of this paper, the historical retrospect in the first place promises notable experience in the field of the regulation of communal ownership. This has to be pointed out in advance in order to dispel any interpretation as though we considered earlier communal ownership to have been significant in volume. It was found on a number of occasions that before the Liberation Hungarian rural communities and towns were void of the financial resources whose employment would have helped them to meet, if only approximately, locally emerging developmental and other communal requirements.

1. The rights of the communities, including their rights of property, was after the Austro-Hungarian Compromise brought under regulation by Act XVIII of 1871. This Act was shortly afterwards superseded by Act XXII of 1886 on the communities. This latter act included provisions in two respects: in the first place it decreed that all and any parts of the territory of the State has to belong to the area of some community.¹⁴ Secondly, the jurisdiction of the community extends to any property in the community and its area (§. 3). The community exercised authority in respect of taxation, registration, etc. of any property situated in its area.

The jurisdiction of the community did not extend to a restriction of private ownership. On the contrary, the composition of the local government bodies, the notion about the functions of local government, operated towards supporting an economy based on private ownership.

Pursuant to the provisions of the act, the communities could manage their own property. The community had property, of its own, but its rights of disposal were subject to limitations.

According to the act the community exercised proprietary rights in respect of things real and personal, it could inherit, accept donation and enter into onerous contracts. Within the sphere of proprietary rights, an important right of the community was the operation of public utilities.

On the basis of their proprietorship, the communities could acquire proprietary rights and accept such obligations, and could therefore act as juristic persons in legal transactions of private law. For a proper management of their property the act required the communities to render account. In the budget and its enclosures the assets and liabilities of the community had to be shown, including any real estate by items, securities, etc.

The limitations on the right of disposal over communal property were the following:

a) Among the items of the assets the so-called principal fund had to be registered separated from all other items. The principal fund could not be reduced or curtailed, the local government body was obliged to preserve it for posterity and could use only the proceeds of it. For practical purposes this limitation did not tie down the hands of the community in its management of the principal fund, as the alienation of property was authorized in the event of the inability of the community to pay off its debts from the proceeds of taxation. This was called the transformation of the principal fund, and not its

reduction. Communal real estate, building plots and other land, as well as buildings were therefore negotiable, but in the event of alienation the sales contract was conditional on confirmation by the chief administrative officer of the district.

b) Areas which owing to their character and purpose (streets, squares, etc.) were inalienable outside the scope of negotiability under private law.

c) The act decreed that any revenue earlier appropriated for the purposes of the community should be appropriated exclusively for communal purposes also in the future.

d) Real estate could be leased only by way of public auction; private lease contracts were subject to municipal approval.

e) Within the scope of onerous transactions, in cases of purchase chargeable to the budget, the communities were obliged to observe the rules governing public contracts.

Hence the purpose of the limitations was partly the preservation of the assets on a given level at a given time, partly the safeguarding of the interests of the community, at least formally, in given cases even contrary to the decisions of the local government body. As a further guarantee the act provided for the financial liability of the members of the communal body for the event of management contrary to the law.

The assets of the communities were composed of the following items:

— real estate; securities; deposits on savings accounts; rights attached to real estate; endowments; enterprises; chattels which may be given on loan; cash surpluses; claims in terms of money; loans; movables.

The communities managed their affairs by making use of these assets, for the most part by realizing revenue and expenditure allocated in the budget. The communal self-government was obliged to exploit profitably any real estate owned by the community, by own management, or by leasing, or by way of share-farming. Similarly, securities owned by the community had to be used profitably. For the use of money capital, Section 80 of the act provided that the rules governing the orphans' funds had to be observed. Accordingly capital could be invested in bonds, or could be loaned.

Communal rights extended to liquor licences (or the farming out of licences), to the right to work a mill, to the right of holding markets, and to exact tolls.

As regards the foundation of communal enterprises, the following principles had to be observed: for profit-yielding enterprises the principle of profitability was normative. For non-profitable communal utilities, provisions had to be made for the coverage of the costs of maintenance. For this purposes the communal utilities collected fees.

As an enclosure to the budget, a precise inventory had to be drawn up, which showed the assets and liabilities of the community, real property, buildings, movables, produce, deposits and securities, interest-bearing and non-interest-bearing claims and the communal endowments, the communal funds, and the communal debts. In conformity with Section 109 of the act: "An inventory shall be taken of the movables and real estate of the community, and of institutions supervised by the community, each year, and the inventory shall be attached to the final accounts of the community."

2. It would be illusory to believe as if the communal assets had guaranteed the satisfaction of the communal needs on an appropriate level.¹⁵ The budgetary system conveys a precise idea of the financial stringency of the communities. About 71 per cent of the communities had to apply for subsidies from the state budget. Notwithstanding the many restrictions, the uncovered estimates amounted to about one third of the estimated expenditure. On the revenue side of the budget, the principal items were incomes from communal property, rates and communal excises transferred to the community, performances in kind, and loans.¹⁶ For uncovered expenditure, the community could levy rates.¹⁷ However, in the majority of the instances, not even the rates could restore the budgetary equilibrium of communal management. Therefore a central fund was formed under the supervision of the minister of the interior from which any deficiency could be made good.

Still the registration of assets, the regulations governing the exercise of proprietary rights, are points of certain interest. In point of fact, on the basis of the right of disposal and the obligation to render account, the communal self-governing body was always responsible for the preservation of the property of the community, for its administration with proprietary solicitude, its utilization, moreover for its augmentation. Although Hungarian bourgeois communal self-government, with its local board formed of the representatives of the greatest tax-payers, failed to represent the interests of wage-earners forming the majority of the population of rural communities and towns, the mechanism of regulation nevertheless contained a gist which could be turned to good account when it came to enforce certain other social functions.

In particular it is worth while to study the question of communal enterprises. Communal enterprises may have had little significance in rural communities, where at most a mill or a distillery was operated by the community. On the other hand in the municipalities a branch or two of the system of public utilities could be owned by private capital, others operated as mixed enterprises in the form of joint stock companies, still the most general type was the public utility or enterprise in municipal ownership.

The commonest form of municipal enterprise was the slaughter-house. These were in operation in every town. There were altogether thirteen ice factories, twenty two water works and eighteen distilleries in the municipalities. As regards public utilities, seven towns had gas-works, other twenty-nine electric works. There were eleven municipal brick-works, two road-construction enterprises, four printing presses, seven quarries, altogether eighteen transport companies, seventeen public baths, six undertakings, five theatres, eleven cinemas in municipal management. The list would not be complete if no mention were made of workshops of moderate capacities to attend to local needs. So there were fourteen blacksmith's shops and seven joiner's shops in Budapest in municipal ownership. In the country as a whole, fifty two shops of a size not exceeding that of an artisan's shop were operating.¹⁸

Of the municipal enterprises eighty nine operated as registered private firms, twenty five as joint stock companies. Among the enterprises there were altogether twelve where private capital had proprietary interests. However, the majority of the public enterprises owe their existence to the transfer of private companies to municipal ownership.

From what has been set forth so far it is manifest that the exploitation of communal and municipal property, the enforcement of the right of disposal took place under efficient central supervision. Notwithstanding this supervision, the gates were thrown open to the evolution of a proprietary attitude and to an establishment of the forms of liability attached to this attitude.

III.

Emergence of Socialist Ownership Relations and the Proprietary Rights of the Councils

1. Statutory settlement following in the wake of Liberation buttressed up self-government property rather than weakened it. In particular in Budapest communal enterprises gained strength.¹⁹ Even at the time of nationalization this distinction remained, and in the public sector the naming of the enterprises so to say laid stress on their distinction from communal enterprises. In fact at that time the enterprises of the public sector were called "national enterprises". The Constitution left the question unsettled, and, in point of fact, on a constitutional level no provisions were enacted which would have precluded the recognition of the ownership of the council in respect of property in council management. Namely Section⁴ of the Constitution defines within the sphere of social ownership state, "public", and co-operative property. The second category, i.e. "public" property, among others, denoted the ownership of the self-governing bodies, and to this day this provision has been left unchanged in the Constitution. For practical purposes Decree 244/1950. (X. 1.) M.T. put an end to the independent ownership of public property by declaring that "public real estate is in the ownership of the State".

When it comes to find an answer to the question of municipal property, Hungarian legislation has to depend on the ideological basis which in the description of nascent socialist social conditions had given its attention entirely to the controversy between capitalism and socialism. The warning of the classics of Marxism that notwithstanding the qualitatively new social conditions the features of the old society would survive, fell into oblivion. A more thorough analysis of ownership was replaced by a schematic description of State and co-operative property.

The circumstance that the socialist revolution was first victorious in an economically backward country, burdened with the most patent and keenest forms of feudal and capitalist exploitation, in a society imbued with contradictions, and not in a highly developed capitalist country, prevented socialist ownership from becoming predominant on the ground of highly developed productive forces. After the birth of Soviet power a tendency towards a concentration of a high degree was inevitable, and the strong central control left its mark also on the regulation of the forms of ownership. "The fact that in contrast to the original Marxist concept socialism was victorious where the standards of production did not only fail to provide the material basis of the 'realm of freedom', but where the basic necessities of a minimum of physical existence were not guaranteed, had an extreme effect on the shaping of property relations or the method of possession.

Centralization, which in a relatively short time permeated the system of possession in all its aspects, was not only brought about by some sort of an intention of scientific management, but so to say enforced by an insistent command

- a) to fight hunger,
- b) to carry through industrialization at a rapid pace, and
- c) not in the last resort by a drive for civilization launched in an extremely keen manner."²⁰

No sooner had the socialist state been created than ownership became the subject matter of legal regulation. However much Marx warned against the illusion as if ownership could be expressed by legal forms with any pretence to accuracy, legal regulation had no assert the principal peculiarities of socialist property relations. Notably

- the differences manifesting themselves on the basis of the development stage of the productive forces continued to remain. In fact the conditions of production of a new type and free of exploitation did not preclude a segregation of interests even within an identity of interests (state or co-operative ownership);

- in the society of the transition period production of commodities did not cease. However, production of commodities segregate the socialist organizations of labour, guarantee their independence, and at the same time by way of commodity relations regulate their reciprocal relations, because in principle the relations are built upon an exchange of equivalents (legal position of the enterprises);

- the difference of essential and surplus production and the collection of the latter remain: the distribution of incomes takes place on the level of the national economy controlled by the State according to plan, and not on the level of the organizations of labour.

These peculiarities find an expression in the circumstance that socialist law draws a line between state property, expressing an all-national or all-social character, and co-operative property, which as group property is segregated from state property not only because of the narrower sphere of the subjects of co-operative ownership, but also because of the form of appropriation. Hence actually there are two current forms of social ownership. Although the common traits of these forms are prevalent, still a differentiation is justified.

In an investigation into the ownership relations the significance of the organization is obvious. Direct appropriation, the direct exercise of ownership rights have become impossible in view of a developed division of labour. The direct organizations of labour may become subjects of partial rights, still "at the present stage of development social ownership may only mean a social process transmitted by some sort of an organization." "... the transmitting organization is primarily always some sort of an organization of labour."²¹

2. In these days, when for the extension of the independence of the local councils the shaping of their self-governing character of a socialist content is the order of the day, the expansion of the proprietary rights of the councils has become inevitable. It cannot be argued that even in the actual method of council management the sphere of assets placed at their disposal is definable. As regards these assets, the rights of the councils exceed those of pure mana-

gerial rights. The councils exercise functions as partial owners, functions which for practical purposes are scarcely limited, still in their acts they appear not as owners, but as trustees of assets under the disposition of the councils.

Thus the state exercises its proprietary rights through state enterprises only in part. The partial proprietary rights exercised by the councils are of no great significance. Still the councils are integrated into an accounting system incorporated in the framework of the state budget, i.e. into an accounting system which is somewhat stricter than that of enterprises.

The councils' rights of property management extend to objects constituting parts of state property, whose central administration has not been solved, whereas their enterprisa administration would be unreasonable. For instance, the councils have to take care of the utilization of reserve plots owned by the State. Statutory provisions authorize the councils also to sell real estate in state ownership. In the majority of instances part or even the whole of the purchase price forms council revenue, and is allocated to development funds.²² Consequently the councils may enforce a development policy subservient to local interests, in which the councils may dispose by sale of assets forming state property, appropriate the proceeds for construction satisfying local needs, or for the extension of existing ones. So by the sale of small dwellings in state ownership, or of state reserve plots which cannot be exploited for agricultural production, by shaping a local building plot policy, the councils — on the basis of statutory provisions — today enjoy rights of disposal which, though not formally, make them owners in respect to contents. However, the contradiction will become still more accentuated when, in the event of the purchase of real estate, the councils act in their own name and enjoy greater independence, whereas at alienation they could only rarely act as proprietors.²³ However, councils cannot acquire ownership in their own name through testamentary succession.

The contradictory character of the limited ownership rights of the councils has to be recognized even more in the event of objects of ownership created as the outcome of a venture undertaken by relying on its own resources. This contradiction could be relieved, if council enterprises were taken up in the list of socialist forms of ownership as the property of the councils. On the part of the enterprises this would imply appreciable differences in comparison to the position of state enterprises. Within the sphere of proprietary management, the executive committees of the councils, or their specialized agencies, exercise authority similar to those of ministries. Namely Government Decree 11/1967. (V. 13.) Korm. on state enterprises endows executive committees with the right to establish enterprises. All other functions of proprietary management come within the jurisdiction of the specialized agencies of executive committees.

3. The theoretical question presents itself: what different forms are established by the evolutionary laws of proprietary relations within the sphere of social ownership?

Here investigations will be confined to the scope of state property. The segregation of the other form of socialist property, i.e. co-operative property, is from the outset defined by the dissimilarity of the subjects of ownership.

Within the scope of state ownership, first the question will have to be answered, whether the maintenance of a unified and indivisible notion of property has any theoretical foundations and significance, when in addition

to the economic approach sociological, legal and financial considerations may have to be resorted to in an analysis of the policy-making aspects of the question.

The position taken by jurisprudence is clear-cut in so far as in shaping the forms of ownership the legislator has to reckon with the actual social conditions which determine the trend of development and the content of socialist ownership. Property expresses social conditions which in the first place are defined by the standard of the productive forces and which reflect the mutual relations of the particular groups or classes of society originating from the position occupied by these groups and classes in social production and from their association with the means of production. All-national ownership is an abstract category capable of expressing that any class or group of society has come into gear in a uniform manner with the objects of property in all-national ownership, without the risk of relations reminding of exploitation developing among them. Hence all-national ownership expresses the socialist character of ownership relations so developed. However, the concept of all-national ownership does not necessarily preclude that in conformity with statutory provisions the local agency of the state, performing public functions, organized on a representative basis and enjoying self-government rights, i.e. the local councils, should figure as the subjects of proprietary rights.

This method of exercising proprietary rights does not run counter to opinions on all-national ownership. Theoretically the all-national character is expressed by a construction which in the sphere of relations to the means of production distinguishes the quality of being a worker from that of a citizen. By means of this construction, and by drawing a line between the peculiar position of the workers' collectives taking part in social production and the proprietary position of the totality of citizens, this construction solves the problem of an indirect exercise of proprietary rights through the intervention of the sovereign power, and rejects the Yugoslav concept construing direct proprietary rights. As far as all-national ownership is concerned, the citizen realizes his proprietary rights through the intervention of the sovereign power. And for that matter the insertion of the sovereign power justifies an inquiry into the question of the level of governmental agencies which would be called to exercise proprietary functions. In the light of the functions devolving on the councils, a rejection of the proprietary character of the council on the ground of its implying the risk of dividing the unity of state ownership appears to be wholly unjustified.

On studying the nature of ownership we cannot forgo the approach which believes to have discovered the origin of segregation within the framework of all-national ownership in the social purpose, functions and management of the objects of ownership.

The politico-economic method of approach to the exploration of the origins of segregations of social ownership relies on the social organizations of labour. Undoubtedly, this approach amounts to a primary recognition of the communities so decisive for the creation of the vital conditions of society. However, the sphere of collectives emerging in a socialist society cannot be blocked on this level; even if not of a wholly determining character, the collectives which come into being on the ground of a territorial distribution of the population, creating collectives of domicile, i.e. rural or urban collectives, are of decisive significance. Whereas the productive organizations of labour

come into possession of partial ownership rights as a result of producing of material goods, the councils representing territorial communities may lay a claim to proprietary rights, partly in view of the purpose of assets entrusted to their management, partly owing to the local character of the material resources ensuring their maintenance and development, and on the basis of the spontaneous contributions of the population.

Special mention has to be made of the constitution of the German Democratic Republic of 1968, which in connexion with the regulation of the economic foundations, and in the sphere of problems of planned economy, emphasizes the responsibility of the units of socialist production and the local agencies of the sovereign power. Section 41 of the Constitution declares: "Within the framework of central state planning and guidance, the socialist enterprises, municipalities, communities and associations of communities are communities of independent responsibility, where the citizens are doing work and are shaping their social conditions." However, the Constitution draws no conclusions as to ownership.

4. As regards their function, a large sphere of the objects of ownership serve the satisfaction of social needs which are outside the scope of productive activities, still they remain indispensable conditions of the continuity of socialist social production and the realization of expanded socialist re-production. The network of sanitary institutions, the educational and cultural establishments meet primary social exigencies, through a system of institutions guaranteeing a supply of these needs on a basic, intermediate, or national level. In this way we may speak of institutions which in pursuance to their social functions are tied to a territory and a scope of duties, and operated in conformity with the statutory regulation adapted to their nature. Of the objects of ownership included here the maintenance, guidance and operation of the institutions taking care of the supply of needs on a basic or intermediate level come within the competence of the local councils. Hence a differentiation will be brought about which has its origin in objective factors. However, the construction of ownership fails to follow this course, a circumstance eventually leading to contradictions of various character.

a) The first contradiction manifests itself between the rights of the councils and the enterprisal rights established since the introduction of the reform of economic management. Within the category of all-national ownership, irrespective of whether it is a productive or commercial enterprise, the partial proprietary rights of an enterprise are by far more extensive than those of the agencies of the councils operating within the framework of the united socialist state. This is a factor operating against the highly desirable extension of the autonomy of councils.

b) The other contradiction appears between the social functions of the objects of ownership satisfying the local needs and their belonging to the all-national form of ownership. Apart from the circumstance that investments and operative costs allocated in the state budget have an important role in the creation and operation of these objects of ownership, central state guidance expressing the all-national nature has been restricted to the promulgation of certain aggregate norms. The rules defined within the legislative jurisdiction of the state agencies among others apply in the same way to the management and operation of co-operative property. The fact that primary and secondary

education is a precondition of meeting the obligation of compulsory school attendance, or the exercise of the citizens' right to education, does not affect the local character of the operation of the institutions supplying basic or secondary education. The normative regulation is an adequate guarantee for the assertion of all-social interests and the fundamental rights of the citizens.

c) Coming back to the function of the state budget, we should like to add two remarks. First, for the creation and operation of institutions of a local character, the local organs extensively rely on the co-operation of the population, on its contribution in the form of voluntary social work or financial contribution. The state ownership form does not give expression to this indirect contribution and is not incentive enough to the population. Secondly, in general the expenditure estimated in the state budget on a given territorial unit may be covered from revenue collected in this territorial unit. Presumably the social productive activities of a given territory contribute to the production of the national income by the ration of its share from budgetary expenditure. Any discrepancies which may appear, mutually compensate one another. Although underlying calculations are wanting, the practical realization of the principle of self-financing would be closely associated with the self-governing character of the councils. By collecting part of surplus revenues, allocations could be made to a fund from which any deficiency could be made good. On this understanding the conclusion may be drawn that the actual method of budgetary financing is an irrelevant factor for the purpose of a definition of ownership.

d) The obligation to render account of the use, preservation, or augmentation of council property would emphasize the responsibility of the executives of the council before the corporate agencies and the responsibility of the corporate agencies before the population as a whole, in a way difficult to assess at the present juncture. In this way the recognition of the proprietary rights of the councils would promote the evolution of socialist democratism in a most direct manner.

IV.

The financial bases of the economic organizing activities of the councils

In the centre of economic organizational work are settlement development, municipal or communal economy, the communal supply of the population and, finally, the satisfaction of hygienic, social and cultural needs. A considerable part of the costs of these functions is covered from budgetary means and by maintaining a network of institutions controlled by the council. It is therefore a reasonable demand that the councils should have a viable economy of their own. In budgetary management, provisions ought to be made for the councils' accumulating the funds for the coverage of their expenditure themselves (the principle of self-financing). This would place them in a position to specify their functions of development and renewal and their operative costs autonomously, naturally under an obligation to observe the budgetary index numbers. However, a system of this type presupposes the existence of an elaborate control and a guarantee to make good any deficiencies in the budget.

Already at present, and in principle, the councils are acquainted with the trend in their revenues and the degree of expectable subsidies from the state

budget for a period of five years in advance.²⁴ However, the revenues depend to a negligible degree only on the trends in the productive activities in the given territory. An initial step towards bringing about a change in the situation is the introduction of rates. It is not unlikely that the councils will take greater interest in an increase of their revenue, namely an increase proportionate to the results of budgetary management and of the operations of enterprises in the ownership, further to the volume of the productive or commercial activities of enterprises or co-operatives not subordinate to the councils.

The weight and social significance of the functions incumbent on the councils are well illustrated by a few numerical returns of the budget and national economy.

The distribution of the fixed assets by controlling authorities as of 1st January, 1968 was as follows: the value of fixed assets of institutions and agencies financed from the budget was 124.3 thousand million forints, whereof 61.7 thousand million forints were in council management. This means a share of the councils of nearly 50 per cent.

At the same time the gross value of enterprisal fixed assets was 618.7 thousand million forints. Of this sum 28,7 thousand million forints represented the fixed assets of council-owned enterprises, i.e. a sum not quite 5 per cent of the total.

These data throw a realistic light on the functions of the councils in economic work. Their activities extend to production at a moderate rate only, although this is a significant factor at their revenues. The councils are active rather in the supply of services for the population. Still the councils ought to accept a larger share in the organization of production by defining the targets of development. Their co-operation could be advanced appreciably by the introduction of council ownership which would shift greater responsibilities on them.

Naturally the proprietary rights of the councils will by themselves help little towards a liquidation of the territorial disproportion in the development of the national economy, nor operate effectively — without central assistance — towards making up the lags. But they may advance the territorial principle to a higher degree in comparison to the branch pattern. A single numerical returns may suffice to convey an idea of the actual territorial disproportions. Whereas in the socialist industry the per capita value of fixed assets is on a national basis 22.440 forints, the figures of a few counties show a sharp contrast:

Komárom, Borsod, Nógrád and Fejér	28.670 forints
Budapest	35.970 forints
Szabolcs-Szatmár	4.863 forints

Disproportions of this degree cannot be made good unless by an allocation of central governmental means for investments.

1. The overwhelming portion of sanitary, social, educational and cultural needs are met from the budgetary management of the councils. Institutions providing the supply of basic and mid-level needs are controlled by the councils.

Maintenance and development of the social, sanitary and cultural services have to be met by budgetary means. In the social and sanitary services, the institutions controlled by the communities and municipalities are the crèches,

the maternity homes and the surgeries. Hospitals and dispensaries are municipality-controlled, whereas larger hospitals, nursing homes, infants' and children's homes, social homes, the epidemiological services are controlled by the county authorities.

Council-controlled institutions include

75 per cent of the hospital beds

98 per cent of the accommodations in infants' homes

97 per cent of the accommodations in the crèches

98 per cent of the accommodations in the kindergartens

99 per cent of the school children attend the general schools of the councils, and

90 per cent the secondary schools of the councils.

On the estimates of 1970 on the expenditure side allocations to the councils amount to 11.7 per cent. The salient figures are:

85 per cent of the health service, and

92 per cent of the social services

are to be financed from the allocations to the councils.

Of the educational institutions, the maintenance of the institutions of primary education come within the competence of the communities and towns. The secondary schools may be both communal and municipal-controlled, whereas both the municipalities and the counties have a share in the supervision of specialized secondary education. There is still a considerable number of institutions of secondary education which, owing to the specialized training provided by them, are under direct ministerial control, although the majority of the technical schools and schools for professional training meet the labour demands of the respective county, or of smaller regions. These institutions are therefore closely linked up with the labour force economy of a given region.

The revenue side of the budget still reflects striking disproportions. The own revenue of the councils amounts to 70.7 per cent of the total revenue, whereas state appropriations figure with 29.3 per cent.

As regards the institutions financed from the budget, the councils have extensive competencies even today. An extension of their rights would in fact give expression to their responsibility to the population, improve their administrative activities and encourage them to make greater sacrifices for the maintenance, rehabilitation and development of the system of institutions on their own initiative.

2. In addition to the budget, another important form of council management is the administration of development funds. Originally the administration of development funds differed from the budget in so far as owing to the fund-like administration credits could be used from accumulations at any time, irrespective of the fiscal period. Another characteristic trait of fund-like management is the improved chance of increasing local revenue, and that in addition to using financial means, extensive use could be made of voluntary work by the population (development of the network of public utilities by voluntary work, etc.).

In 1970 the estimated incomes of the development fund amount to more than ten thousand million forints. Of this sum 10 per cent are surpluses from savings of the previous year. One per cent of the total income is derived from

bank credits; 7 thousand million forints are budget appropriations, whereas local income amounts to 1,8 thousand million forints.

The local sources of income of the development fund are as follows:

communal rates (2 per cent of disbursed wages and salaries);
contributions of the populations to communal development (2 to 3 per cent assessed on the general income tax of the population);
the percental share of the allowance for depreciation of council-controlled enterprises;
fees for the use of building plots (according to the area used by the enterprises).

From the development, fund investments for the improvement of the standards of services, in the spheres of the health service, education, the improvement of the equipment of the various institutions, and communal development are financed.

The gradual liquidation of the difference between budgetary management and the development funds is in its beginnings. Actually, savings from the budget may be carried over to the next year, and a wider scope has been opened to a re-allocation of funds among the particular items of the budget.

3. The councils have to take care of the organization of the supply of the population. Therefore they are responsible for the commercial and industrial services. The performance of a considerable portion of these functions is advanced by the co-ordinating and influencing activities of the councils. In addition to financial means placed at their disposal, the councils employ their supervisory and official authority (as far as the development and operations of co-operative industry and trade, and of private small-scale industry are concerned.) A smaller portion of the needs are supplied by council-owned enterprises. Through these enterprises the councils guarantee the supply of the market, industrial repair work and other services.

As will be clear from the structure of the budget, the significance of enterprisa economy is not restricted to a supply of the needs of the population. Enterprisa economy is closely associated with the drive for the accumulation of the coverage of budgetary expenditure. However, the councils' right to establish enterprises is still under close central supervision. The minister having competence in the particular branch may find necessary to give an opinion, and also the approval of the minister of finance is needed for a new foundation. The problem of the foundation of joint council and co-operative enterprises is still unsettled.

What is called county-centrism is often responsible for controversies. Mainly on the part of the towns, objections have been raised to the county supervision of communal enterprises for many years. The gradual transfer of enterprises to municipal control is in full swing now, in particular when the enterprise in question is one serving the supply of the needs of the population of a town.

a) Owing to the frequent re-shuffling of the scope of activities of the enterprises and the numerous reorganizations in the meantime, the number of enterprises will hardly provide a footing for the appraisal of development. In 1960-thousand council enterprises were operating with a complement of 366,651. The value produced amounted to 20 thousand million forints, the turnover to 35 thousand million forints. In 1967, 732 enterprises were controlled by the

councils, with altogether 405,275 workers. The consolidated production and turnover value was close to 77 thousand million forints.

There is a lively debate in progress on the delimitation of the enterprisal activities of the councils. No objections have been raised by those taking part in the discussions against an organization of the public utilities in the form of council-controlled enterprises, or the maintenance of enterprises supplying communal needs by the councils, etc. However, there are opinions according to which the industrial activities of the councils ought to be restricted to the repairing and servicing branches of industry. Production for the market should be licenced only as long as it can rely on local raw material and waste-material resources.

Accordingly, the purpose of council-controlled industries is rather variegated. Its primary function is the supply of communal services indispensable for the population. Similarly to the social, sanitary and cultural institutions operating under a budget system, here, too, an exchange of equal values is unrealizable. In view of their influence on the standard of life the prices of the services have been fixed at a rather low level. Consequently the enterprises providing public utilities subsist on appropriations from the state budget. Hence services in council management are not profit-yielding enterprises. The proprietary role of the councils in the case of the enterprises providing communal services would in particular be expressive of the organizational activities of a public authority serving the interests of the population, performing this activity in the course of the operation of the objects of ownership in duty bound, and being responsible for it.

After the institution-controlling activities, yet another sphere has been explored where the local demands made on the councils would manifest themselves in a still more decided form, were the councils in a proprietary position to attend to their functions.

b) As for size, the council-controlled industries consist of small and medium-size units. This industry has a distinct role in providing the necessary services, in expanding the assortment of consumers' goods, and in the co-operation with large enterprises. Another function of local industry displaying the humaneness of the socialist state is the employment of partially incapacitated persons and the extension of the scope of outside work.

Although in 1965 it was not yet generally recognized that in the building material, textile industries, in home-work in certain branches of industry (telecommunication), in the food industry, in industrial services and public utilities owing to its readiness for quick self-accommodation a local industrial enterprise (controlled by the council or a co-operative) would be the preferred form, still the returns already tend to confirm the viability of the council-controlled industry.

In the particular branches the following ratios were recorded in 1965:

Branch of industry	Percental distribution of all-national production			Average No. of enterprisal employees			
	Ministerial	Council	Co-operative	Private	Ministerial	Council	Co-operative
	industry			industry			
Machine building	91.4	2.6	4.6	1.4	2.630	390	180
Building materials	93.8	4.1	1.3	0.8	2.070	220	190
Processing industry	61.9	12.9	18.6	6.6	1.060	330	140
Printing industry	82.0	13.0	—	5.0	670	210	—
Textile, clothing	54.6	12.6	26.2	6.6	2.450	470	170
Leather, shoes	67.7	5.3	19.3	7.7	2.860	490	140 ²⁵

In the enterprises under council management and in co-operatives supervised by the councils, in 1968, referred to the national economy as a total, the number of employees showed the following percental distribution:

Branch of economy	Percentage of total number of employees		
	Council	Co-operative	Total
	enterprise		
Industry	8.6	13.2	21.8
Building trade	14.4	19.4	33.8
Agriculture + forestry + water conservancy	1.8	81.1	82.9
Transport and telecommunication	11.5	0.4	11.9
Home trade	41.1	25.2	66.3

The significance of the council-owned enterprises for the council finances is confirmed by the fact that among the own revenues of the councils the contributions of the council-owned enterprises figure with about 6 thousand million forints in 1970.

The public utilities occupy a peculiar position in the new system of economic management. A characteristic trait of the public utilities is that they supply the basic necessities of life for the population, provide direct and permanent services, through the establishment of high technical standards, and a quasi-enterprisal operation of systems of net-works (water, sewer, gas, district heating systems, local transport, etc.). On the enterprisal side the monopolistic position of these enterprises does not show itself at its best. The enterprise is bound to prepare for peaks, occasionally consuming top capacity. At the same time, owing to the limitation of the capacity of the network, the enterprises are authorized to subject to a scrutiny any new demands for services forthcoming from the field.

The public utilities are subject to the specialized agencies of the councils in Budapest and in the counties. However, on the professional, all-national level, as many as four ministries exercise supervisory rights, specify technical conditions, prescribe accounting methods, the content of the annual reports, etc. This contradiction is made even worse by the fact that these records, accounts,

and reports lack the council approach. In the guidance of public utilities not only the territorial principle, but also branch principles have a word to say. The performance of the peculiar functions of the public utilities would be greatly advanced by their transfer into the ownership of the councils.

V.

Definition of the scope and character of council ownership

1. Budget-financed institutions controlled by the communal and municipal councils ought to be transferred into their ownership with the proviso, however, that for their maintenance and operation in both professional and financial respects the governmental regulations should be made binding on the councils.

As a matter of course, council ownership would in this case extend to the buildings, offices, official quarters and building sites.

Streets, roads, squares in the built-in area of a town or rural community, similarly unbuilt plots in state ownership, homestead plots, state reserve land, roads, water courses should remain in state ownership. Management and alienation of these by the councils should take place in conformity with effective statutory provisions. This is insisted on by the interests of traffic, water regulation, a centrally controlled building plot policy and settlement development. On the other hand dwellings in state ownership should be transferred into council ownership, as assets of an expressly local character, supplying primary necessities of life, for the preservation and rehabilitation of which the councils should be responsible. Of all assets, these constitute perhaps the greatest burden; but even at the present more abstract form of state ownership, responsibility for the management of state-owned flats rests on the councils.

2. Within the competence of the council, the right to establish enterprises should be guaranteed unchanged. It would be justified to refer the decision on the establishment of enterprises to the exclusive competence of the councils. The enterprise would then become the property of the founder council. The starting assets would include funds placed by the council at the enterprise's disposal. For that matter the legal position of a council-owned enterprise is wholly uniform with that of a ministry-controlled enterprise.

The question may be asked whether the provisions on preliminary agreement actually in force could be mitigated for smaller, in particular communal councils. Preliminary agreement is justified, still, because within the sphere of the rights of larger communities enterprisa management is wholly feasible, it would be sufficient to obtain the preliminary opinion of the competent department of the county council and the Directorate of Revenues of the Ministry of Finance in the matter of licence.

3. So far mainly the proprietary rights of municipal and communal councils have been discussed, although the direct guiding organs of both budgetary institutions and enterprisa agencies are councils of a higher level in many cases. By this method of dealing with the subject-matter we have tried to give expression to the opinion that of the councils of various levels, mainly the autonomy of the municipal and communal councils, i. e. councils in direct

contact with the population, and better acquainted with the needs of their jurisdictions, should be reinforced, and consequently proprietary rights should be widened on this level. However, the problem of enterprises inevitably suggests the endowment of the councils of a higher level with the same rights.

A special problem is that of county enterprises already in operation. In our opinion the transfer of communal enterprises, supplying the needs of a town into council ownership is indispensable. A joint municipal-district enterprise is within the range of possibility, still the county control of servicing enterprises (pharmacy centres, chimney-sweep enterprises, cinemas, undertaker's shops, building enterprises, designing offices, etc.) supplying the larger part or even the whole of a county should be maintained. At the actual foundation of an enterprise, or at the decision of the question of the future control of an enterprise, considerations of organization, economic policy and such of guidance, have in all events to be taken into account.

4. In addition to council ownership, obviously the legal institution of "administration" ensuring rights for the council in respect of assets remaining in state ownership, and conferring rights of the actual extent on the councils, should be maintained. Hence the council is either owner or administrator of the assets possessed by it.²⁶ In particular in respect of assets in the exclusive ownership of the state the limitation remains that the council cannot exercise ownership rights on them.

5. The foundation of joint enterprises is still a matter calling for statutory regulation. In principle the councils may even today agree with centrally controlled enterprises as well as co-operatives and call to life joint enterprises. However, the partial proprietary rights of the councils are still undefined. When it is the case of an institution it is thought to be almost a matter of course that following upon the foundation (or approval) all obligations of maintenance should burden the councils. Council ownership would for the purpose of maintenance, operation, use and distribution of the profits make possible a distribution of the co-proprietary obligations and rights by shares, or even the incorporation of methods departing from this principle, in the agreement.

6. The definition of the scope of activities of council-owned enterprises, or more extensively formulated, the definition of the notion of local industry, is an extremely argued question. However, the dynamic evolution of economic life cannot tolerate an accurate definition, as even the widest definition might prove restrictive in an actual situation. Therefore the sphere of the formation of council-owned enterprises ought to be given an extensive construction. Responsibility concomitant of autonomous management, the system of financial interest and the limitation of the financial means are all factors which automatically control council activities. Still when necessary the managerial activities may be marshalled into the proper channel by way of central economic controls or normative limitations.

On considerations of incentive it would be justified to come to the aid of the councils by guaranteeing them credits on preferential terms. For the purpose of the promotion of foreign trade activities of the national economic system, foreign currency allocations should be made to council-owned enterprises producing for export.

Specially defined regulators are needed for servicing, communal and local transport enterprises, whose activities, owing to their character of public utilities, cannot be adapted to the principle of profit-yielding. Even in the future, special rules will have to be made for subsidizing council-owned enterprises of this type, and for collecting their incomes.

7. It is beyond the scope of this paper to scrutinize centrally controlled enterprises from the point of view of a justification of decentralization. In the first place the forms of subordination of the building trade and the road maintenance organization are strongly argued. Still the problem can be studied only in the light of the allocations for investments placed at the disposal of the councils. As a matter of fact, the productive activities of the councils for their own purposes depend on the ratios by which the local and central agencies get a share of the budget allocations for investments.

In addition to defining the level in the administrative hierarchy in charge of the supervision of enterprises, another problem of extreme importance, yet still unsettled, crops up, namely the question of the share of the authorities in the guidance of enterprises as far as this is associated with the exercise of executive functions. This share embraces partly the exercise of the traditional rights of the authorities in control of industry, partly the competence of a local price authority. The exercise of these functions extends equally to the central, council-owned and co-operative enterprises. In order that considerations of convenience prevailing in the guiding activities should not interfere with the performance of executive functions, the functions to be performed by the authorities should preferably be entrusted to departments segregated from the agency in charge of carrying into effect the principles of economic policy.

Hence the fundamental question, whether within the scope of socialist ownership assets destined for local use, i.e. assets for local purposes produced by local co-operation should be segregated as council-owned property, decidedly has been answered in the affirmative. As regards the second part of the question, as far as the origin of this form of ownership is concerned we agree with the position that as for its subjects council-owned property is not group property, and in it the all-national proprietary nature still prevails. As a matter of fact this property is exploited through the agency of the local organs of the socialist state on the one part, and on the other it is not restricted to the exclusive service of local interests, as these local interests are at the same time all-social interest.

The larger portion of council-owned property consists of assets, real estate and equipment destined for the operation of institutions, and exploited in conformity with the uniform rules governing the budget. Another portion of the property is exploited for the foundation of productive, servicing and commercial enterprises. The legal independence of the enterprises is guaranteed in conformity with the general regulations, however, for the efficacy of their economic guiding activities the councils may apply special preferences for influencing enterprisal operations. In particular the development of communal services and the subsidization of enterprises serving social ends calls for the introduction of special forms of interestendness.

The most straightforward form of council-owned property is communal and municipal property. This form should be preferred within as wide a scope as permitted by circumstances. This does not prevent council agencies of a

higher level and having economic autonomy from becoming to a limited extent the owners of their enterprises or institutions meeting needs of a specifically regional character, still expressly tied to a fixed place.

The statutory and legitimate exploitation of council-owned property in harmony with socialist social and political ends and for the achievement of the targets of national planning are guaranteed by

a) the guiding role of the socialist state, which, by having recourse to the means of executive power, may in conjunction with normative regulation and economic incentives enforce the realization of the ideas of the central sovereign power and the exploitation of council-owned property in accordance with the national plan.

b) As for its character, council-owned property is socialist property, equivalent to state property and constituting part of all-national property. This determines the exercise of proprietary rights and the method of alienation. The citizens of the state, who in a given territory on the basis of their domicile, education, or enforcement of their civic rights, make use of the services of council-controlled institutions, may take part on equal terms in the use of the objects of property.

c) The councils exercising proprietary rights act as parts of the organization of the united socialist sovereign power. The councils are bound to use the objects of ownership for the satisfaction of the needs of the population represented by them, by observing the statutory provisions governing possession and use of these objects, and the statutory limitations of the right of disposal (restraint on alienation, restraint on leasing, restriction of entering into onerous contracts, etc.).

The following are the institutional forms of central control:

— purchase and sale of real estate is subject to the licence of a superior authority;

— economic and fiscal control of the organizations financed by the state budget;

— auditing of the closing accounts of the enterprises, control of their payment of taxes and the remittance of the budgeted amounts.

d) The basic means of production remain in the ownership of the state even afterwards. By the exploitation of these means of production the central agencies of the state may effectively influence the trends of development of the national economy.

NOTES

¹ In particular see Sándor Lakos, *A tanácsok helye és szerepe a szocialista építés jelenlegi szakaszában* (Position and Function of the Councils in the Present Phase of Socialist Building), Kossuth Könyvkiadó, Budapest, 1969.

² Halász, József: *Az állami központosítás és a tanácsönkormányzat kérdéséhez* (To the Problem of State Centralization and the Self-government of Councils), *Társadalmi Szemle*, 1954, No. 2.

³ Cf. Beér, János: *A helyi tanácsok kialakulása és fejlődése Magyarországon (1945–1960)*. (Formation and Development of the Local Councils in Hungary [1945/1960]), *Közgazdasági és Jogi Könyvkiadó*, Budapest, 1962.

⁴ Kállai, Gyula: *Az állam és a szocialista demokrácia fejlődésének egyes kérdései* (Some Problems of the Growth of the State and Socialist Democracy, *Állam és Igazgatás*, 1963, No. 5.

⁵ In the following a few data are quoted to illustrate this: At the elections of 1963, 371,076 people spoke at the nominating meetings. The voters brought forward 244,118 motions in matters of public interest, of which 55 per cent (135,139) concerned topics of communal and municipal development. To these motions concerning housing-estate management, transport, commerce and the interests of the servicing trades have to be added. See Dallos, Ferenc: *A tanácsok a szocialista demokrácia szervei* (The Councils: the Organs of Socialist Democracy), Kossuth Könyvkiadó, 1964, p. 69.

⁶ In 1964 on an all-national basis the revenues of the communal development fund mainly from local sources exceeded one thousand million forints. Local revenue per capita amounted to 150 forints. From the communal development fund, 739 million forints were appropriated for investments. The accumulation of funds is evident from these data: a large portion of the revenue was cash surplus carried over from the past year. Later this accumulation tended to grow. See Dallos, op. cit., p. 215.

⁷ In 1963 the councils participated by 25.8 per cent, in 1964 by 38.7 per cent in the spending of investment estimates. However, here also the investments of agricultural co-operatives are included. This of course appreciably modifies the figures. See Dallos, op. cit., pp. 226–227.

⁸ Lakos, op. cit., pp. 25–26.

⁹ Lenin's Works (Hungarian edition) Vol. 26, 1952, p. 428.

¹⁰ The position taken by J. Djordjević is quoted by Kostin, P. In his paper "The Sovereign Power and Self-Government in Socialism", *Sovietskoe Gosudarstvo i Pravo*, 1969, No. 2.

¹¹ Lenin's Works (Hungarian edition) Vol. 27, 1952, pp. 201–202.

¹² Kostin, P., op. cit.

¹³ Globevnik, M., *Archiv za pravne i drustvene nauke*, 1966, Nos 2–4, pp. 331–332.

¹⁴ In conformity with §. 1 of the Act the notion of a community embraces towns, large and small communities. According to §. 19 "Any territory either as a complementary part of the communal fields, or as farmsteads (alps) administratively attached to a community, shall belong to a community."

¹⁵ As one of the authors remarks after the enactment of Act IV of 1924, and in particular of Act V of 1927 there followed "the planned and systematic curtailment of needs... still the restriction of needs was obviously feasible only down to a certain limit... in the course of 1936 the majority of the Hungarian communities were reduced to the lower limits of a satisfaction of needs..." In this year the needs per capita amounted to 12.56 pengő. (The Economy of the Hungarian Communities according to the Communal Cost Estimates of 1940. *Magyar Statisztikai Közlemények*, Vol. 115, Budapest, 1943, p. 17.) The structure of the communal budget clearly shows that communal self-government lacked the resources which would have helped it to solve the problems of settlement development. In 1940 the administrative expenditure (without the administration of taxes and the management of property) absorbed 42.8 per cent of the estimates. Education and physical training figured with 11.3 per cent, cultural expenses and subsidies to religious denominations with 2 per cent. The health service together with veterinary hygiene absorbed 8.1 per cent and public welfare 2.8 per cent. (Ibid., p. 20.)

¹⁶ According to the summary of the 1940 budget the sources of communal revenue were composed of the following:

Administrative revenue	6.5 per cent
Administration of taxes	39.8 per cent
Fire prevention service	5.7 per cent
Public health and veterinary hygiene	6.3 per cent
Education and physical training	0.4 per cent
Public education and religious denominations	0.2 per cent
Poor relief and welfare	0.9 per cent
Transport	3.0 per cent
Management of property	17.2 per cent
State subsidies	13.8 per cent
Extraordinary	6.2 per cent

On average the revenue of the communities from property amounted to about 17 per cent of the overall revenue. The most important items were revenue from real estate, still revenue under the game laws and from the right of holding markets was by no means negligible (ibid.). The following is the distribution of municipal revenue by sources of revenue (percentages):

Incomes from private farms	11.6
Industries and enterprises	10.9
Intangible assets and endowments	.5
Administrative revenue	19.3
Taxes	41.7
Contributions	.3
Compensations and other non-real revenue	5.4
Other ordinary revenue	9.7
Total of ordinary revenue	99.4
Extraordinary revenue	.6
Grand total of revenue	100.0

(See Dr. Lajos Bene: *A magyar városok háztartása* (Public Finances of the Hungarian Towns). Statisztikai Közlemények, Vol. 76, No. 4, Budapest, 1935, p. 53.)

Income from municipal enterprises as percentage of the overall revenue:	
Gross profit of industries and enterprises financed from the municipal budget	4.1
Contributions of self-managing factories and enterprises	6.8
Total	10.9

(Ibid., p. 58)

¹⁷ Rates or local taxes were assessed on the land-tax, housing estate tax, company and bonus tax. Originally rates amounting to 50 per cent of the state taxes were considered normal.

However, in 1940 on an all-national average the communities were forced to levy rates amounting to 70.9 per cent of the state taxes. The rates were highest in County Szabolcs (112.6 per cent.). There were altogether twelve communities in the country which were able to manage their finances without having recourse to levying rates. In 1940 already rates of 75 per cent were about the normal in the budget of the majority of communities. On the whole, in 1940 57.7 per cent of the communal budgetary revenue was derived from communal incomes, 9.2 per cent, from state subsidies, and 31.1 per cent from rates (ibid. p. 37).

¹⁸ Cf. Dr. Szigeti, Gyula: *Magyarország városi üzemei és vállalatai* (Municipal Factories and Enterprises of Hungary), Statisztikai Közlemények, Vol. 71, No. 1, 1933, pp. 5-6.

¹⁹ It would occur hardly to anybody living in Budapest that the designation "Közzért" originally referred to the communal form of enterprise.

²⁰ Hegedüs, András: *Adalékok a tulajdonviszonyok szociológiai elemzéséhez* (Contributions to the Sociological Analysis of Property Relations) Magyar Filozófiai Szemle, 1969, No. 6, p. 1131.

²¹ Világhy, Miklós: *A szocialista gazdasági rend alkotmányos alapjairól* (On the Constitutional Bases of the Socialist Order of Economy) MS.

²² This has been decreed by the Ministry of Agriculture and Food Industry and the Ministry of Housing and Town Planning in their joint regulation No. 18/1968. (V. 23) MÉM - ÉVM, on the alienation of land unsuitable for large-scale farming. However, for earlier regulation the provisions of the decree 27/1959 (V. 7) Korm. were characteristic, according to which only a definite portion (30 per cent) of the purchase price of sold housing estate could be remitted to the communal or municipal councils, whereas 20 per cent of the balance had to be paid to the county council, and 50 per cent to the Ministry of Finance.

²³ According to Government Decree 2/1959. (I. 3.) Korm. purchase of real estate was authorized by the superior council (up to 50,000 forints by the district, and up to 250,000 forints by the county council). In conformity with Government Decree 27/1959. (V. 7) Korm. on the alienation of smaller housing estates, the agencies of the council (district or municipal) merely marked out housing estates put up for sale [§. 3, clause (1)]. The sale of housing estates earmarked for alienation was the function of the National Savings Bank [§. 3 clause (2)].

²⁴ However, temporarily the councils were paid only the subsidies for 1969 and 1970, as the following years come within the period of the Fourth Five-Year Plan.

²⁵ Dr. Szabó, Béla: *A kis- és középüzemek szerepe, a helyi ipar fejlesztésének feltételei* (The Role of Small and Medium Size Plants; Conditions of the Development of Local Industry). Institute of Sociology of the Central Committee of the Hungarian Socialist Workers' Party, Budapest, 1969, MS, p. 49. According to a comparative analysis in France, in the clothing industry a plant employing 200 workers at most is considered viable. As compared to this figure in Hungary even in the council-owned clothing industry there is a strong trend towards concentration. The significance of the local industry has grown owing to the growth of demands for services. As has been made clear in this paper, in the capitalist countries with highly developed

economy, 30 to 40 per cent of the overall expenses of the population are absorbed by the services. In the Soviet Union 30 per cent of the overall consumption are expended for services. In highly developed economies, a third or even one half of all workers are employed by the servicing branches. In Hungary the ration is one third, but of the expenditure of the population the services absorb 30 per cent only. As a result of the vigorous drive for the expansion of the services in communal services, the rate of the annual increase amounts to ten per cent.

²⁶ Cf. Dr. Sári, János, Tanácsi Szervek rendelkezése állami tulajdon felett (Disposition over State Property by the Agencies of the Councils) Állam és Igazgatás, 1963, No. 4.

ZUSAMMENFASSUNG

I. Der sozialistische Inhalt der Ratsautonomie der Gemeinden und Städte und die wirtschaftliche Selbständigkeit

Die wirtschaftlichen Aufgaben der Räte sind mit der Entwicklung der sozialistischen Demokratie eng verbunden. Die Erhöhung der Bedeutung der wirtschaftlichen Organisationsarbeit ist die Funktion einerseits der politischen Entwicklung der Gesellschaft, andererseits der sich in den materiellen Grundlagen der Gesellschaft abspielenden objektiven Prozesse.

Der neue Mechanismus der Wirtschaftslenkung änderte auch den wirtschaftlichen Wirkungskreis der Räte. Im Sinne der Richtlinien der Reform sind die Räte für die Entwicklung der Siedlungen — auch die Organisation des Wohnungsbaus inbegriffen — für die Befriedigung der kommunalen Bedürfnisse der Bewohner und für die Entwicklung der Dienstleistungen verantwortlich und sie koordinieren die Gebietsentwicklung.

Nach dem Übergang auf das neue System der Wirtschaftslenkung wurde die allzu stark zentralisierte Lenkung der Volkswirtschaft, das System der Weisungen, durch die erhöhte Anwendung der ökonomischen Hebel, unter diesen insbesondere durch die der materiellen Anreize, ersetzt. Ein eigentümlicher Widerspruch der neuen Situation besteht darin, dass die Staatsunternehmen im Besitz einer grösseren Selbständigkeit sind, als welche die Ratsorgane, die als Einheit der sozialistischen Staatsorganisation funktionieren, geniessen.

Dem Prinzip der jugoslawischen gesellschaftlichen Selbstverwaltung gegenüber würden die *Eigentümerrechte der Räte*, abweichend von den unmittelbaren, jeden behördlichen Eingriffen freien Eigentümerrechten der Werktätigen, einem solchen Vertretungsorgan zukommen, das als *Teil der einheitlichen sozialistischen Staatsorganisation* funktioniert und in diesem Rahmen Selbstverwaltungsrechte genießt.

II. Die Regelung des Gemeindeeigentums im bürgerlichen ungarischen Rechtssystem

Die Methode der Regelung des Gemeindeeigentums, begründet im Gesetz XXII: 1886, verdient unsere Beachtung. Demnach *übte die Gemeinde Eigentumsrecht über unbewegliche und bewegliche Sachen aus*. Sie konnte erben, Geschenke annehmen und entgeltliche Verträge abschliessen. Ein besonderer Typ der Verträge war der *öffentliche Liefervertrag*, aber daneben waren im Gesetz noch weitere Einschränkungen des Dispositionsrechtes aufgezählt (Verkauf des Grundvermögens, von Liegenschaften nur mit Genehmigung des übergeordneten Organs). Zwar wurde der Gebrauch des Gemeindeeigentums, das Geltendmachen des Dispositionsrechtes unter wirksamer zentraler Aufsicht ausgeübt, gab es doch die *Möglichkeit zur Entfaltung der Eigentümergesichtspunkte und zu der Verwirklichung der damit verbundenen Verantwortungsformen*.

III. Das Entstehen der sozialistischen Eigentumsverhältnisse und die Vermögensrechte der Räte

Nach dem Entstehen des ersten sozialistischen Staates, der Sowjetgewalt, war die Bestrebung nach einer starken Konzentration, die starke zentrale Leitung notwendig, die ihren Stempel auch auf die Regelung der Eigentumsrechtsformen aufdrückte. Die örtlichen Organe des sozialistischen Staates übten aber bei der Ausübung ihrer wirtschaftlichen Organisationsfunktionen sehr umfangreiche Rechte aus.

Unsere Räte, in erster Reihe die Gemeinde- und Stadträte können aufgrund der Rechtsregeln auch heute umfangreiche Dispositionsrechte über in staatlichem Eigentum stehenden Liegenschaften ausüben, die *die Räte zwar nicht formell, doch inhaltlich zum Eigentümer machen*.

Das Eigentum der Räte als selbständige Eigentumsform stünde nicht im Gegensatz zum Volkseigentum, denn es läge innerhalb dessen. Das Volkseigentum ist nämlich eine sehr weite Kategorie, die ausdrückt, dass sämtliche Klassen und Gruppen der Gesellschaft auf gleicher Weise mit den in Volkseigentum stehenden Eigentumsobjekten verbunden sind, ohne dass sich unter ihnen ausbeutungsähnliche Verhältnisse bilden könnten.

Die Grundlagen der Abtrennung des Ratseigentums:

- das Dispositionsrecht über das gesellschaftliche Eigentum kann nicht vollständig zentralisiert werden; eine rationelle Dezentralisierung ist notwendig;
- aufgrund der Bestimmung des Eigentums bildet sich eine Gebietstrennung aus;
- die Finanzierung des Gebrauchs des Eigentums ist auch ein Grund der Abtrennung;
- die Verantwortungsformen können besser differenziert werden.

IV. Materielle Grundlagen der wirtschaftlichen Organisationstätigkeit der Räte

1. 11,7% der Ausgaben des Haushaltvoranschlags für das Jahr 1970 werden durch die Räte verwirklicht. Im Zweig des Gesundheitswesens ist ihr Anteil 85%, im sozialen Zweig 92%, 99% der Schülergruppen der Grundschulen, 80% der der Mittelschulen werden in Schulen unter Ratsleitung unterrichtet.

70% der Einnahmen der Räte stammen aus eigenen Quellen, 30% aus staatlichem Beitrag.

2. Die Einnahmen des Entwicklungsfonds der Räte überschreiten im Jahr 1970 die Summe von 10 Milliarden Forint.

3. Im Rahmen der Unternehmenswirtschaft gehören beinahe 1000 Unternehmen mit etwa einer halben Million Werktätigen zu den Räten. Die Einzahlungen der Unternehmen bilden 30% der Einnahmen der Räte.

Der Anteil der Räte am Grundmittelbestand der Volkswirtschaft in Budgetverwaltung beträgt 50%, an dem in Verwaltung der Unternehmen 5%.

V. Festlegung des Kreisses und Charakters des Ratseigentums

In erster Reihe müssten die *Gemeinde- und Stadträte* mit Eigentümerrechten bezüglich der durch sie geleiteten Budgetinstitutionen und Unternehmen ausgestattet werden. Neben den Gemeinde- und Stadträten könnten auch die Räte höheren Niveaus in einem beschränkten Kreis in den Besitz von Eigentümerrechten kommen.

Die Anerkennung der Eigentümerrechte der Räte könnte bei Geltendmachung folgender Rechtsgrundsätze erfolgen:

a) auch bezüglich des Gebrauchs des Ratseigentums kommt die zentrale leitende Rolle des Staates durch Erlassen von Normativen, durch Anwendung der Mittel der Staatsverwaltung und durch Anwendung von wirtschaftlichen Hebeln zur Geltung;

b) das Ratseigentum ist kein Gruppeneigentum. Dem Charakter nach ist es sozialistischer Eigentum, Teil des Volkseigentums, gleichwertig mit dem Staatseigentum. Die Staatsbürges können unter gleichen Bedingungen am Gebrauch der Eigentumsobjekte teilnehmen;

c) die Eigentümerrechte ausübenden Räte sind Organe, die als Teil der einheitlichen sozialistischen Staatsorganisation funktionieren. Ihre wirtschaftliche Tätigkeit erfolgt entsprechend dem Grundsatz des demokratischen Zentralismus unter zentraler Aufsicht, deren institutionelle Formen folgende sind:

- Genehmigung des Kaufs und Verkaufs der Liegenschaften durch das übergeordnete Organ,
- wirtschaftliche und finanzielle Revision der Budgetorgane,
- Kontrolle der Richtigkeit der Bilanz, der Einzahlung der Steuern und der Budgeteinzahlungen der Unternehmen.

d) Die grundlegenden Produktionsmittel bleiben auch weiterhin in Staatseigentum, mit deren Gebrauch die Zentralorgane des Staates die Entwicklungstendenzen der Volkswirtschaft wirkungsvoll beeinflussen können.

РЕЗЮМЕ

I. Социалистическое содержание самоуправления сельских и городских советов и хозяйственная самостоятельность

Хозяйственные задачи советов тесно связаны с развитием социалистической демократии. Увеличение значения хозяйственно-организаторской работы зависит с одной стороны от политического развития общества, а с другой стороны от объективных процессов материальных основ общества.

Новый механизм правления хозяйством изменил и экономическую компетенцию советов. По директивам реформы советы несут ответственность за развитие поселений, — в том числе и за организацию жилищных строителей, — за удовлетворение коммунальных потребностей населения, за развитие обслуживаний и координируют территориальное развитие.

При переходе к новой системе хозяйственного правления слишком централизованное правление народным хозяйством и система, основанная на инструкциях, сменялись более эффективным применением экономических регуляторов, в том числе прежде всего применением материальных стимулов. Свойственным противоречием нового положения является то, что государственные предприятия могут хозяйничать более самостоятельно, чем органы советов, действующие хозяйственной единицей социалистической государственной организации.

Противоположно принципу югославянского общественного самоуправления и в отличие от непосредственного собственнического правомочия трудящихся, свободного от вмешательства государственной власти, *собственнические правомочия советов* принадлежали бы такому представительному органу, который действует, как часть единой государственной социалистической организации и внутри ее осуществляет права самоуправления.

II. Регулирование сельской собственности в венгерском буржуазном правопорядке

Заслуживает внимание метод регулирования сельской собственности, предусмотренный XXII законом 1886. г. Согласно этому *селу принадлежало право собственности движимых и недвижимых имуществ*. Оно могло получить наследство, подарки и заключить возмездные сделки. Свойственным видом договоров был *договор коммунальной поставки*, но кроме этого в законе имеются и другие ограничения, стесняющие право распоряжения (продажа основного и недвижимого имущества разрешением вышестоящего органа). Хотя использование сельской собственности и осуществление права распоряжения ими проводились при эффективной центральной проверке, все таки *дали возможность для создания собственнического воззрения и для реализации форм ответственности, связанных с ними*.

III. Происхождение отношений социалистической собственности и имущественные правомочия советов

После возникновения советской власти, первого советского государства, необходимым явилось стремление к сильной концентрации, к сильному центральному правлению, которое повлияло и на регулирование юридических форм собственности. Однако местные органы социалистического государства осуществляют широкие правомочия, выполняя свои хозяйственно-организационные функции.

Наши советы, прежде всего сельские и городские советы, на основе юридических норм и теперь могут иметь право распоряжаться принадлежащим государству имуществом, *которое делает советы, хотя не формально, но по содержанию собственниками*.

Собственность совета, как самостоятельная форма собственности не противостояло бы общенародной собственности, ибо имело бы место в ее рамках. Общенародная собственность же, — очень широкая категория и выражает, что все классы и группы общества одинаково связываются с предметами, находящимися в общенародной собственности без того, чтобы среди них появились бы эксплуататорские отношения.

Основы отграничения собственности совета:

- нельзя полно централизовать право распоряжения общественной собственностью; необходима рациональная децентрализация;
- на основе назначения собственности создается территориальное отделение;
- это отделение оправдывается и финансированием пользования собственностью;
- формы ответственности могут быть более дифференцированными.

IV. Материальные основы хозяйственно-организационной деятельности советов

1. 11,7% расчета расходов по государственному бюджету 1970 г. реализуется советами, 85% в отрасли здравоохранения, 92% в социальных отраслях. 99% групп учеников начальных школ и 80% учеников средних школ учится в школах, находящихся в управлении советов.

70% доходов советов исходит из собственных источников, а 30% из государственных взносов.

2. Доходы фонда развития советов в 1970 г. превышают 10 миллиардов форинтов.

3. В рамках управления предприятиями советам принадлежит около тысячи предприятий, имеющих приблизительно полмиллиона рабочих. Внесения предприятий составляют 30% дохода советов. Советы получают 50% бюджетного состава основных фондов народного хозяйства, и 5% из бюджета предприятий.

V. Определение сферы и характера собственности совета

Необходимо было бы присвоить право собственника прежде всего *сельским и городским советам* по отношению бюджетных учреждений и предприятий, управляемых ими. Наряду с сельскими и городскими советами, советы высшей ступени могли бы иметь права собственника в ограниченном кругу.

Признание собственнического правомочия советов происходило бы по следующим юридическим принципам:

а) Центральная руководящая роль государства осуществляется и в области использования собственности советов посредством издания норм, применением средств государственной власти и хозяйственных стимулов.

б) Собственность совета не является групповой собственностью, но по характеру это социалистическая собственность, часть общенародной собственности, равна государственной собственности. Граждане государства при равных условиях могут пользоваться предметами собственности.

в) Советы, осуществляющие права собственности являются органами, действующие как часть единой социалистической государственной власти. Их хозяйство ведется согласно принципу демократического централизма при центральной проверке, организованные формы которой:

— требование разрешения вышестоящих органов для купли-продажи недвижимых имуществ,

— хозяйственная и финансовая проверка бюджетных органов,

— проверка подлинности баланса предприятий, уплаты налога и вноса в бюджет.

г) Основные средства производства остаются и в дальнейшем в государственной собственности, использованием которых центральные органы государства успешно влияют на развитие народного хозяйства.